

Alisha & Zach Decker
Glacier Guides, Inc.
P.O. Box 66
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April 21, 2017

VIA E-MAIL - objections-alaska-regional-office@fs.fed.us
AND UPS

Beth Pendleton, Regional Forester
USDA Forest Service, Alaska Region
709 W. 9th Street
P.O. Box 21628
Juneau, AK 99802-1628

**Re: Objections of Glacier Guides, Inc. to the Shoreline II Outfitter/Guide Final
Environmental Impact Statement and Draft Record of Decision**

Dear Ms. Pendleton:

Pursuant to 36 C.F.R. part 218, subparts A & B (2017), Zach and Alisha Decker and Glacier Guides, Inc. ("Glacier Guides") submit the following objections for your review with respect to the Shoreline II Outfitter/Guide Final Environmental Impact Statement and Draft Record of Decision.

We provided the Forest Service with substantive, timely comments regarding the Shoreline II Project and have standing to object. 36 C.F.R. § 218.5(a). Notice of the objection period was published in the *Ketchikan Daily News*, on March 10, 2017, initiating a 45-day objection period ending on April 24, 2017. As such, this objection is timely.

For the purposes of this objection, the lead objector is Alisha Decker, on behalf of Glacier Guides. 36 C.F.R. § 218.5(d). Glacier Guides is a family-owned and operated

professional guide/outfitter service, with 40 years of guiding experience in Southeast Alaska.

Zach and Alisha Decker are also long-time residents of Alaska who use and enjoy the Shoreline II Project area.

<u>Name of Proposed Project:</u>	Shoreline II Outfitter/Guide Project
<u>Names and Titles of Responsible Officials:</u>	M. Earl Stewart, Forest Supervisor, Tongass National Forest
<u>Implementation Area:</u>	Tongass National Forest

Introduction

In January 2016, the Forest Service issued the Shoreline II Outfitter/Guide Draft Environmental Impact Statement (“DEIS”), which addressed non-motorized outfitter and guide activities that originate from the marine shoreline areas in the Admiralty National Monument and the Hoonah, Juneau, and Sitka Ranger Districts. DEIS, Abstract. The activities are typically conducted within ½ mile of the marine shoreline. *Id.*

On April 25, 2016, Glacier Guides, as the holder of a Special Use Permit (“SUP”) for Hunting and Guiding within the Project area and an entity directly affected by the Shoreline II Project’s impact on the environment, submitted Comments on the DEIS. A copy of Glacier Guides’ public comment (“Comment”) is attached as Exhibit A.

On March 10, 2017, the Forest Service issued its Final Environmental Impact Statement (“FEIS”) and Draft Record of Decision (“Draft ROD”) stating that the Responsible Official intended to select for implementation Alternative 2, the Proposed Action, from the FEIS. Draft

ROD at R-1. The Forest Service's stated "purpose and need" for the Shoreline II Project, which was unchanged from the DEIS, provides that:

A decision is needed to determine outfitter/guide use allocations for the project area. This is necessary to balance commercial and non-commercial recreational opportunities and to provide and maintain high quality recreation experiences without degrading forest resources.

This action is needed to meet Forest Plan goals and objectives for recreation and tourism, and to support local and regional economies. Since the 2004 Shoreline Outfitter/Guide ROD was signed, demand for outfitter/guide services that originate from the marine shoreline has increased. The need for outfitter/guide services has expanded both in terms of number of visitors and the types of services being offered . . . There has been an increase in the fleet of small to mid-size cruise ships desiring to outfit/guide on the Tongass National Forest, and the demand for outfitted/guided big game hunting continues.

FEIS, Summary at 1-2; DEIS, Summary at i-ii (emphasis added). We were glad to see that the FEIS and Draft ROD had addressed many of our comments. However, we are providing these objections with the goal of gaining clarity on significant environmental issues remaining from our comments that were not fully resolved in the Draft ROD/FEIS.

OBJECTIONS

I. The FEIS/Draft ROD Does Not Adequately Explain The Proposed Actions Or Their Impact On the Environment For Several Key Topics

The purpose of the National Environmental Policy Act ("NEPA") is to ensure that a federal agency takes a "hard look" at the environmental impacts of its actions before going forward. *Kleppe v. Sierra Club*, 427 U.S. 390, 408-09 n.21 (1976). Public participation is vital to the pre-decisional process and is only possible when an agency's actions are fully disclosed for meaningful public comment. *State of Cal. v. Block*, 690 F.2d 753, 770-71 (9th Cir. 1982).

To this end, NEPA also requires that the proposed action be fully explained in clear and concise language so that the public may have a meaningful opportunity to comment on it.

Natural Desert Ass'n v. Bureau of Land Mgmt., 625 F.3d 1092, 1121 n.24 (9th Cir. 2010).

Environmental impact statements are inadequate where the agency's plan is vague, unintelligible, and not readily understandable by persons likely to be affected by the EIS.

California, ex rel. Lockyer v. U.S. Forest Serv., 465 F. Supp. 2d 942, 947-48 (N.D. Cal. 2006).¹

The following objections seek greater clarity on a number of key topics that, from our review of the Draft ROD/FEIS, need further development.

A. The Forest Service Has Not Identified The Procedures It Proposes To Adopt For Allocating Big Game SUPs Or How The Procedures Would Work In Practice

A “purpose and need” for the project in the DEIS was that: “in 2008, the Forest Service updated the national directives for outfitter/guide services. These updates simplified procedures and clarified policies for priority use permits governing performance, inspections, and allocation of use.” DEIS, Summary at i-ii.

Yet, we could not tell from the DEIS specifically how these simplified procedures would be implemented or whether and/or how they might impact the environment within the Project area. Unfortunately, the DEIS also did not provide direction to stakeholders as to where they

¹ Where significant changes are required to be made from draft to final NEPA documents, the agency should make those changes in a supplemental document prepared, circulated, and filed in the same fashion as a draft and final environmental impact statement. 40 C.F.R. §§ 1502.9(c) and (d).

might find the new procedures among the updated national directives. This issue was of concern in our comments. Comment at 12-13.

The FEIS and Draft ROD were more helpful by providing some references to manual and handbook provisions regarding a number of highly significant issues, including addressing competitive interests through the use of prospectuses. *E.g.*, FEIS 2-14 to 2-16. Yet, just how these provisions would be implemented and their specific impact on the environment remains very unclear to us.

Because of this lack of clarity, we feel guides have not yet been provided with a meaningful opportunity to fully understand and then comment on what the Forest Service is proposing and the significance of those proposals to our ongoing efforts to be good stewards of the wildlife and forest habitat upon which we depend. As such, we request that the Forest Service prepare a supplemental document addressing these issues for further public comment. 40 C.F.R. §§ 1509(c) and (d).

B. The Draft ROD Should Explore And Evaluate The No-action Alternative

Under NEPA, agencies are required to “[r]igorously explore and objectively evaluate all reasonable alternatives,” including the No-action Alternative. 40 C.F.R. §§ 1502.14(a) and (d). The discussion of alternatives both provides a “clear basis for choice among options by the decisionmaker and the public” (40 C.F.R. § 1502.14(b)) and fosters “better decision making and informed public participation for actions that affect the environment.” 40 C.F.R. § 1501.1(c).

As guides, we rely on a sustainable environmental balance, something we believe is being achieved under the current system, which would be maintained by the No-action Alternative.

In our comments, we explained that the No-action Alternative was not only: (1) the most realistic option, given that only 16,000 service days of the 47,449 service days already allowed are used annually in the Project area; but also (2) necessary to preserve bear habitat. Comment at 2-4.

The Forest Service seems to agree with our view about the environmental advantages of the No-action Alternative:

the No-action Alternative, would result in the least environmental disturbance and is therefore the environmentally preferred alternative. The No-action Alternative would continue the existing management practices of the outfitter/guide special uses management program, and has a lower total number of service days than any of the action alternatives, including the Selected Alternative. A lower number of service days equates to less use on-the-ground in the project area, which would provide the greatest resource protection of all alternatives considered.

Draft ROD at R-14 (emphasis added).

We see that the Draft ROD justifies the increase in allocation of service days by pointing to visitor industry trends showing growth in the region. Specifically, the Forest Service notes that Alternative 2 “allows a reasonable balance of economic opportunity, and growth to new and existing outfitter and guide operations.” Draft ROD at R-12. However, we believe the Forest Service has not fully explained how the existing allocation of service days in the No-action Alternative is inadequate to meet the growth trends in the region and does not adequately consider the harmful effects of Alternative 2 on bear populations and habitat. As explained in

our comments, “[o]n average, a *total* of 16,000 service days are used annually in the Project area, which is only about a third of the 47,449 service days already allowed by the Shoreline I decision.” *See* Comment, Exhibit 1, Carey Case PowerPoint. This means there are already more than 30,000 service days available for growth in the No-action Alternative, nearly double the number of service days actually used. Moreover, the FEIS also says that “[a]ll alternatives – including the No-action Alternative – allow for an increase in outfitted/guided use in wilderness over the 2011-2015 average actual use for the summer (high use) season.” FEIS, Appendix E at E-9. Therefore, it would appear that the No-action Alternative already satisfies any need for economic growth.

Additionally, because guided hunts are already allocated by special use permits, and the Forest Service has indicated that it does not anticipate an increase in the number of permits for registered guides in GUA4, FEIS at 1-7, an increase in service days would only increase non-hunting uses, such as mini-cruiseships and other tour boats. We provided scientific studies (and evidence from our years of experience in the field) showing that bears will not stay in or return to habitats with high levels of human activity and that coastal black and brown bears are displaced by bear viewing as well as photography, such is commonly engaged in by passengers from mini-cruiseships.² The FEIS/Draft ROD did not address the scientific studies but did acknowledge

² *See* Comment at 3-4 (citing Jennifer K. Fortin, *et al.*, Impacts of Human Recreation on Brown Bears (*Ursus arctos*): A Review and New Management Tool, 11(1) PLoS ONE 9 (2016), available at <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0141983> (last visited on Apr. 7, 2017) (attached hereto as Exhibit B); Tom S. Smith, *Effects of Human Activity on Brown Bear Use of the Kulik River, Alaska* 267 (2002), available at

that “[a]ll alternatives allocate total use well above the current actual use, which could result in greater disturbance to bear if actual use increases to allocation levels.” FEIS at 3-138. As explained in our comments and noted by the FEIS, a sufficiently increased number of service days would eventually drive bears out of their traditional habitat within the Shoreline II area altogether to the detriment of bears, big game hunters, and visitors to the Project area on mini-cruiseships. Accordingly, we request further explanation regarding how Alternative 2, rather than Alternative 1, can best provide for balanced and sustainable recreation in the Shoreline II Project area for the guided public.

C. There Is A Need For Greater Clarity Regarding The Transition From The Current Process For Renewal Of Existing Permits To Potential Use Of A Prospectus Where A Competitive Interest Exists

We also identified several concerns about how the proposed system for administering the Outfitter/Guide program would work in practice and the impacts that a new system would have on wildlife and the environment for big game hunts, specifically including hunts for brown bear. Comment at 2-17. One of our comments in this regard was addressed by the Forest Service’s decision to withdraw the proposed allocation of brown bear hunts by use area and season because such an allocation “would create more problems than it would solve, particularly with

regard to the increased likelihood of female brown bear mortality.” Draft ROD, Appendix E at E-15. We appreciate that the Forest Service took this action.³

We believe this same reasoning applies to other components of the Draft ROD/FEIS. We remain concerned that the proposed Shoreline II Project increases the risk of harm to wildlife (by overcrowding and the potential for user conflict by inexperienced guides) while at the same time altering a well-functioning system for providing the public with a full range of access to the forest, including a true, big game hunting experience. It seems to us that these results are at odds with the stated purpose and need for the Shoreline II Project. *Oregon Natural Resources Council v. Lowe*, 109 F.3d 521, 526 (9th Cir. 1997) (Under NEPA an agency must “articulate a rational connection between the facts found and the conclusions made”). For this reason, we request that the Forest Service also provide more information and an opportunity for public comment on the following three issues:

i. Aligning all current permits to expire in 2023

The Draft ROD/FEIS provide that permits that are in good standing and that expire prior to 2023 “*could be renewed*” for a term that does not exceed the prospectus start date. FEIS at 2-15; Draft ROD at R-8. This expands upon the DEIS at 2-33, which, as our comments noted, needed further development and clarity. Comment at 12-13. However, the FEIS is still unclear to us and therefore we cannot assess its environmental impacts. Specifically, please clarify

³ We also commend the Forest Service for eliminating the requirement that a fishing guide move to another location if two are more groups are already fishing there “because this measure could not be accurately evaluated.” FEIS at 2-2.

whether existing permits in good standing *will be* renewed until at least 2023 and whether a renewed SUP will contain the same provisions and be subject to the same administrative procedures as have been successfully utilized in the past. In our case, this would include the use of pooled GUAs and the absence of individual guide names on our special use permit. If approval of Alternative 2 could require new provisions to be included in a permit upon renewal, please identify all such provisions. *See* 36 C.F.R. § 251.64; Forest Service Handbook 2709.14, 53.1(n). Moreover, if SUPs in good standing that expire prior to 2023 will not necessarily be renewed because of provisions in Alternative 2, please identify the reasons such permits will not be renewed.

A related concern with aligning all permits for expiration in 2023 is that opportunities for guided hunts would have to be essentially shutdown and then restarted from a standstill. Such an approach could result in environmental impacts particularly during the startup phase. For example, the strong possibility exists that a number of inexperienced guides who are also new to the Shoreline II Project area could obtain permits and commence operations in the same season, resulting in conflicts among permit holders. Additionally, there could be harm to the guided public, who would not know which guiding businesses, if any, would be able to provide hunts past 2023 and, therefore, would forego recreation in the form of a guided big game hunt in the Shoreline II Project area.⁴ Indeed, any transition from the current system of renewal of permits in good standing to a system of offering permits pursuant to a prospectus where there is a

⁴ Guides typically accept reservations a year or more in advance.

competitive interest is almost certain to cause some dislocations. Yet, the FEIS/Draft ROD do not discuss the environmental impacts of these potentially serious changes.

ii. The process for transferring SUPs before 2023

The DEIS recognized the likelihood that a guide might relinquish or want to sell a SUP before 2023. *See* DEIS at 3-170. Although the Shoreline II documents say that such permits may be made available through a prospectus, the documents also indicate that a prospectus will not be used until 2023, at the earliest. *See* Draft ROD at R-6. We would request greater clarity on this point so that the probable number of guided permits and associated hunts can be considered and their impact on the environment can be fully assessed.

iii. Implementation of a system allocating SUPs by prospectus

We recognize that the Forest Service has indicated that use of a prospectus system will begin in 2023, *at the earliest*. Yet, it is not clear how the proposed allocation of hunts by prospectus will work in practice. *See also* Comment at 12-13.

Indeed, the DEIS acknowledged that there is no timeline for the development of a prospectus for allocating SUPs. DEIS at 3-170. *See also id.* at 3-192 (an analysis of the environmental impact on brown bears resulting from the use of a prospectus “is speculative at this time because the specifics of the prospectus are unknown”). Such a change in the issuance and administration of SUPs is almost certain to impact the environment, including wildlife and their habitats. Unfortunately, it is not possible for us to provide meaningful comments about the

environmental impacts of an SUP allocation system contemplated by the Draft ROD/FEIS that has not yet been explained.

We have a significant concern about the impact of allocating hunts by prospectus on brown bears, which would likely be the species most adversely affected by a change in the current system. As you know, the current system has been a collaborative effort developed over many years by guides, the state, the public, and the Forest Service. This system continues to work well, particularly for brown bears, because as the Forest Service has found:

a high level of communication, coordination, and cooperation amongst the current [brown bear guides] and with other outfitter/guides and unfitted/unguided groups, is expected to continue. Most of the brown bear guides operating now have been operating for decades; they know the areas and the patterns of use. Professionalism and continued communications are critical to maintaining the desired range of recreation experiences being sought by all public lands visitors.

DEIS at 3-136. However, a significant number of inexperienced guides, such as could obtain permits as early as 2023 (or whenever a prospectus system is adopted), is almost certain to disrupt the current system, harming the guided public, and causing conflicts among and between user groups. Such disruption may well adversely impact the very environmental values and public access the Forest Service seeks to protect. We remain concerned that the extent of the impacts from a change-over to the prospectus system have not been analyzed and disclosed in the Shoreline II environmental documents and therefore request that the Forest Service explain how it plans to proceed on this issue.

D. The Forest Service Should Specify How It Will Handle Pooled GUAs

As stated in our comments on the DEIS, the Forest Service suggests that pooled GUAs result in a greater “number of user conflicts;” however, no evidence is provided to establish that this is the case. Comment at 13-14. Despite our comment, the issue was not addressed in the FEIS at 2-15 or the Draft ROD at R-6.⁵

In an effort to gain clarity on this point, we recently requested that Chad VanOrmer, Ranger for the Hoonah Ranger District and the Admiralty Island National Monument, explain his understanding of the agency’s position. Mr. VanOrmer told us that the Forest Service would continue to allow the use of pooled GUAs, until at least 2023, so long as a permit containing pooled GUAs remained in good standing. Conversation between Alisha Decker and Chad VanOrmer, March 2017.⁶ We would request that the Forest Service simply confirm that Mr.

⁵ Instead, the Forest Service stated that “[t]he maximum number of GUAs per permit will be determined by the number of registered guides authorized on the permit and the corresponding number of GUAs within which each registered guide is licensed to operate by the State.” FEIS, Appendix E-16. However, under the FEIS/Draft ROD, the number of registered guides on a permit may be determined by an authorized officer, apparently with unilateral authority, on a case-by-case basis. As stated in our comments, this engenders uncertainty and a decreased ability for our guides to make rational decisions about future operations. Comment at 15-16. The stated purpose of the maximum number of guides per SUP is to guard against “unchecked expansion” and to stay under the 20-guide maximum under the BBMS. Draft ROD at R-6; FEIS, Appendix E-15. However, even without this additional provision, the number of guides has remained under the 20-guide maximum since the issuance of the BBMS in 2000. As such, concerns about unchecked expansion do not appear to be well founded.

⁶ In late March 2017, Chad VanOrmer also conducted a meeting with a number of the permitted Guides as well as representatives of the Alaska Professional Hunters Association (“APHA”) about the Draft ROD/FEIS.

VanOrmer's statement is the agency's official position on pooled GUAs. To the extent that the Forest Service's treatment of pooled GUAs will be other than our understanding of Mr.

VanOrmer's explanation, we ask that the Forest Service clarify how pooled GUAs will be administered. Comment at 13-15. We would object to any potential elimination of pooled GUAs, at least until there is some specific data regarding a "greater number of user conflicts" caused by pooled GUAs as well as data showing that the elimination of pooled GUAs would allow for any better coordination between guides or benefit to wildlife and their habitat.

E. The Impact Of Species-Specific Permits (And Hunts) Has Not Been Considered

Glacier Guides' permit provides for a variety of guiding opportunities in GUA 1 (Black Bear, Mountain Goat); GUA 3 (Black Bear), and GUA 4 (Brown Bear, Deer, Fishing). It appears to be a necessary implication of the new system described in the Draft ROD/FEIS that SUPs for Brown Bear hunts would be competitively offered and administered separately, while SUPs for other species would therefore also have to be offered and then administered on a separate, likely to be species-by-species, basis.⁷ We can find no explanation in the FEIS/Draft ROD of how such a permitting system could work in practice and particularly with regard to administration of a species-by-species allocation of all SUPs by prospectus beginning as soon as

⁷ For example, Glacier Guides' SUP includes brown bear, black bear, fish, and goats. However, other guides and outfitters may not have the facilities and expertise necessary to conduct hunts for all species. Therefore, a prospectus likely could not include multiple species, for fear of eliminating full and open competition from all guides/outfitters, regardless of which species they hunt.

2023. Again, it is simply not possible for us to comment on the wide-range of potential impacts to species and their habitat that would result from such a change.⁸

F. Deer Hunts On Southwest Admiralty Island

Glacier Guides commented that there was no reason to prohibit guided deer hunting in the 04-05A Southwest Admiralty Use Area because the Forest Service had not identified any concerns about public safety or known subsistence harvest. Comment at 16.⁹ In response, the Final EIS at 3-152 states, without any citation, that: “If these areas are being used by guided hunters, subsistence users may be displaced, even if the target species is plentiful. Outfitters and guides can provide access to important subsistence use areas for people who would not likely be able to access these areas otherwise.”

The Forest Service has identified no scientific data as to the effects of guided hunts in 04-05A, now or in the future. FEIS at 3-153. Further, as there is no prohibition for guides to simply drop off hunters in 04-05A for unguided hunts, this ban only affects registered guides and,

⁸ The Forest Service also recently indicated it was considering removing from the “faceplate” (*i.e.*, page 1 of the SUP) the references to GUAs within which hunts can occur. However, in the absence of the Forest Service’s assent to general access to a given GUA, ADF&G officials may be unwilling or unable to approve permits at all, or in time for the Forest Service to finalize operating plans. Again, this likely problem with permit administration does not appear to have been addressed in the NEPA documents.

⁹ Moreover, the proposed closure is contrary to the goals of the Alaska Constitution’s common use clause, which states: “Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.” ALASKA CONST., art. VIII, § 3.

moreover, the Forest Service's reasoning for a total ban on deer hunting led by guides is irrational.¹⁰

Request for Meeting

Forest Service regulations provide that an objector may request to meet with the Responsible Official to discuss potential resolution of objections. Pursuant to 36 C.F.R. § 218.11(a), we respectfully request a resolution meeting to discuss and attempt to resolve our objections. Indeed, the majority of our objections likely can be resolved by clear explanation in NEPA documents demonstrating that the Forest Service in fact has undertaken the requisite "hard look" at the actions we have raised.

Please coordinate scheduling of a meeting with our Objector Contact, Alisha Decker, at Decker@glacierguidesinc.com or via phone at (907) 321-2180. Additionally, to the extent that the Forest Service conducts resolution meetings with other objectors, we request that Ms. Decker be notified of the meeting via email or phone 10 days prior to the meeting and given an opportunity to attend.

Request for an Extension of Time for a Meeting

Pursuant to 36 C.F.R. § 218.11(a), "[t]he reviewing officer has the discretion to determine whether adequate time remains in the review period to make a meeting with the objector practical, the appropriate date, duration, agenda, and location for any meeting, and how the meeting will be conducted . . ." Hunting guides and outfitters are among the primary

¹⁰ Notably, the FEIS at 2-2 states that this ban applies to "new use requests" and does not affect existing authorizations.

stakeholders who will be affected by environmental impacts resulting from the changes proposed in the FEIS and Draft ROD. However, hunting guides and outfitters' spring season typically begins mid-April and does not end until mid-June, during which time guides are in remote areas and often unable to readily access technology or attend meetings in person. Therefore, we respectfully request that the Responsible Official extend the time within which to meet to mid-June.

Conclusion

We appreciate the opportunity to present our views in the form of the foregoing objections to the Shoreline II Project NEPA documents. We propose that the Forest Service meet with us in an attempt to resolve these issues and/or develop a supplemental NEPA document describing in detail how the agency proposes to proceed in light of our objections.

Thank you for your consideration of our views on the Shoreline II Project. We, like the Forest Service, are committed to ensuring that a sustainable balance of forest uses is maintained. We look forward to arriving at a mutually satisfying resolution of our concerns to the benefit of all stakeholders.

Beth Pendleton, Regional Forester
USDA Forest Service, Alaska Region
April 21, 2017
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Sincerely,

s/ Alisha Decker

Alisha Decker
Glacier Guides, Inc.

s/ Zach Decker

Zach Decker
Glacier Guides, Inc.

cc(via email): Connie McKenzie, Juneau Delegation Representative for Senator Murkowski
and Constituent Relations Representative for Senator Sullivan
Elaina Spraker, Regional Director for Senator Sullivan
Chuck Kleeschulte, Senior Professional Staff Member, Committee on Energy and
Natural Resources